IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 708

MONTOUR RAILROAD COMPANY, INC.
Petitioner

v.

LOUISE ZIMMERMAN, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDICES

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NO. ....

MONTOUR RAILROAD COMPANY, INC.,
Petitioner

v.

LOUIS E. ZIMMERMAN, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, MONTOUR RAILROAD COMPANY, INC., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on November 9, 1961, (26)* and in which a Petition for Rehearing was denied on December 4, 1961 (27).

* References to this Petition or to the Appendices hereto are by page number alone. References to the Appendix filed in the Court below are by page number following an "R," such as R1a. Page numbers using "a" are from Appendix of Appellant below. (Petitioner here). No Appendix was filed by Appellee below.

Question Presented for Review.

Opinions Below

The memorandum order of liability of the United States District Court for the Western District of Pennsylvania has not been reported.*

Copies of the memorandum order of liability and subsequent findings of fact and conclusions of law of the District Court are appended hereto as Appendix A (17) and Appendix B (19).

The opinion of the United States Court of Appeals for the Third Circuit has not been reported as yet. A copy of the Opinion is appended hereto as Appendix C (21)

Grounds for Jurisdiction

Jurisdiction to issue a writ of certiorari is conferred on this Court by the Act of June 25, 1940, c. 646, 62 Stat, 928, title 28, U.S.C. § 1254(1).

The judgment of the United States Court of Appeals for the Third Circuit was entered on November 9, 1961 (26) and on December 4, 1961, the Petition for Rehearing filed by petitioner was denied (27).

Question Presented for Review

In a suit for personal injuries against a railroad by its employee on the claim that a car coupling device violated Section 2 of the Safety Appliance Act, was the

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* On the matter of damages see: *Zimmerman v. Montour Railroad Company, Inc.*, 191 F. Supp. 433, (W.D. Pa., 1961).

Statutory Provisions Involved.

Court of Appeals correct in interpreting the applicable statutory provision that cars must couple automatically by impact as requiring no evidence of any shock or blow of two railroad cars coming together, and in relying, in its affirmance of a judgment of liability, on the fact that employees of a coal company had placed railroad cars in proximity to each other in such a way that the couplers were together, though there was no evidence that such placement by non-railroad employees was done to effectuate a coupling?

Statutory Provisions Involved

Section 2 of the Safety Appliance Act (45 U.S.C.A. § 2, 27 Stat. 531) provides:

"It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers, coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars."

STATEMENT OF THE CASE

On the night of November 14, 1958, Louis E. Zimmerman, respondent, a railroad brakeman in the employ of petitioner, sustained injuries in an accident for which suit was brought under Section 2 of the Safety Appliance Act (45 U.S.C.A. § 2, 27 Stat. 531) (R6a, R7a, R39a, R45a). The claim was based solely upon the proposition that a railroad car coupler purportedly failed to work efficiently (R6a, R24a, R29a) and there was no claim for negligence (R6a, R7a, R24a, R28a).

The car in question was one of some ten to fifteen empty coal cars which had been delivered to and in the possession of a coal company and which, after being emptied by coal company employees, had been placed by the coal company's employees on a sloping track below its rotary car dumper (R27, R28a, R41a, R50a, R51a). Some of the cars were together, while others were separated, on the track leading away from the rotary car dumper of the coal company (R10a, R20a, R27a, R28a, R38a, R41a) and to petitioner's switching yard (R7a, R31a). Respondent and other members of his crew were preparing to inspect, couple and move the cars away from the coal company (R7a, R9a, R10a, R27a, R28a).

The respondent, on arriving at the scene, and preparatory to making the move, started to inspect the couplers and pins of the empty cars (R10a, R11a, R28a) to see if they were all coupled together (R9a, R25a, R28a, R47a) because frequently the cars were not coupled together — but separated (R9a, R20a, R27a, R28a, R30a) as the coal company employees often rode the empty

cars down the dump track so slowly that the cars either did not come together, or else did not come together with sufficient impact to permit them to couple (R52a, R53a, R61a, R66a, R70a).

At the coupler between either the fourth or fifth or fifth and sixth cars from the engine, respondent noticed that although the couplers on two of the cars were together, the knuckle lock pin had not dropped in the coupler of one of them (R11a, R19a, R25a). Respondent thereupon went between the cars to see if he could make the pin drop (R13a, R25a, R37a), but he was unsuccessful (R14a). When respondent could not make the pin drop, he gave the engineer a signal to pull away with the four or five empties already coupled on to the engine (R14a, R20a, R21a, R22a)—and the engineer did so, moving ahead (downhill) and five or six feet away from the remaining empties placed by the coal company (R14a, R15a, R41a).

Respondent then went between the cars, jiggled the pin and opened the coupler on the car towards the engine (R15a, R25a, R26a, R34a, R35a, R36a) to prepare for a coupling by impact (R15a) and at that time three or four of the remaining string of empty cars uphill and behind him, drifted down (R15a). When the uphill cars drifted down, respondent's arm was caught between the couplers (R15a, R16a).

Immediately after the accident, the two cars involved were seen to be completely coupled together (R43a, R44a, R46a, R50a, R54a, R56a). Inspection and use afterwards showed the couplers to be in proper working order (R56a, R57a).

Statement of the Case.

The case was tried before Chief District Judge Wallace D. Gourley, without a jury. The Learned Trial Court found petitioner railroad had violated the provisions of Section 2 of the Safety Appliance Act (17 R71a). Thereafter, the Learned Trial Court filed findings of fact and conclusions of law (19). The Learned Trial Court's findings did not state that the couplers failed to couple automatically upon impact or that there had been any impact, or, if so, when it took place, i.e., when the cars were in the possession and control of the coal company or when the railroad arrived to inspect, couple and move the cars (R73a). There was no finding that the coupler was defective (R73a). The Learned Trial Court ultimately ordered judgment against petition in the sum of $93,500.00.

Petitioner then appealed to the United States Court of Appeals for the Third Circuit. Only the question of liability was contested. On November 9, 1961, the Court of Appeals affirmed the judgment of the District Court and in substance stated that there need not be an express finding of impact, that such was not required by the statute, and that "impact" required no force or blow. It sustained the finding of a violation of Section 2 of the Safety Appliance Act because the knuckle lock pin had not locked, although the couplers were "together" when respondent inspected them to see if the cars were coupled (21-26). Thereafter, on December 4, 1961, the Court of Appeals denied the Petitioner railroad's Petition for Rehearing (27).

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I.

The decision of the Court of Appeals establishes a rule of conduct affecting the railroad industry and is of national importance, in a case of first impression.

The decision of the Circuit Court of Appeals establishes, it is believed, for the first time, a rule of conduct binding upon railroads in or affecting interstate commerce, as a result of which a railroad is held liable, without evidence of impact, when automatic couplers fail to couple merely when employees of a consignee place cars upon a track, even where there is no evidence that such placement of cars upon the track was for the purpose of effecting a coupling. Although the requirements of Section 2 of the Safety Appliance Act are strict, it is not believed that they are sufficiently strict to permit their application to the situation in this case.

In this case, the respondent was inspecting the cars for the purpose of seeing whether or not they had been coupled together as a result of the placement thereof on the track in question by employees of the coal company. The record is devoid of any proof of impact at the time of the placement of the cars by the coal company. If the decision of the Court of Appeals is allowed to stand, it will mean that every railroad becomes an insurer of the operation of its equipment, even when that equipment is operated for a different purpose by employees of a consignee.

II.

The decision of the Court of Appeals is in conflict with the interpretation of Section 2 of the Safety Appliance Act as intended by Congress.

Section 2 of the Safety Appliance Act expressly requires only that couplers couple automatically on impact while being used by common carriers. However, the Court of Appeals stated, in substance, that there need not be an express finding of impact, that such was not required by the statute, that impact requires no evidence of a shock or a blow, and evidence of one coupler "impinging" on another is adequate. The opinion of the Court of Appeals makes the case turn upon what is respectfully believed to be an improper interpretation of a definition in Webster's New International Dictionary (2nd ed. 1952, page 1246.) There the word impact is defined as

> "impact—n. 1. An impinging; a *striking* together; *collision; forcible contact;* force communicated. 2. Mech. Act of impinging, as of one body against another, or of a stream against (not tangential to) a fixed or moving float or vane; also, the single instantaneous stroke of a body in motion against another either in motion or at rest" (Emphasis supplied)

The observation of the Court of Appeals with respect to this definition is that "As used in connection with mechanical activities, the word impact is defined as the impinging of one body against another. Webster's New International Dictionary (2nd ed. 1952, page 1246). No shock or blow is required, as defendant would have us hold." (23)

We respectfully submit that this is not a justifiable interpretation of the dictionary definition relied upon. Our observation on that point is believed especially pertinent in light of the definition of the word "impinge" at page 1249 of the same dictionary.

> "impinge—v. . . . (L. impingere, Fr. im-in + pangere —to strike, fasten, fix. See PACT; cf. IMPACT) *intransitive*: 1. To *strike* or dash (on, upon, against), esp. *clashingly or with sharp collision*; of radiant or aerial waves, *to come sharply (on or upon a body)*; as, sound waves impinge on the tympanum. 2. To encroach, or infringe (on or upon); as without impinging on God's justice. 3. To come into contact with; to touch closely. — *Transitive*: To thrust, force, or dash; to thrust or strike against; to collide with." (Emphasis supplied)

It is respectfully submitted that the dictionary definition of "impact" and the dictionary definition of "impinge" both carry with them the essential elements of striking and of force.

However, it is not believed that the case should have been decided on the basis of semantic or lexicographic considerations. The intent of Congress is believed to have been clear.

It has long been recognized that the general purpose of Section 2 of the Safety Appliance Act was to obviate the necessity of men going between railroad cars to couple the cars manually as the cars were moved together, or of going between the cars to uncouple them as they were moved apart. The automatic coupler, in contrast to the old style link and pin coupler, was devel-

oped to eliminate the necessity of men working between cars during the coupling and uncoupling operations.*

Since the adoption of the Safety Appliance Act in 1893, the use of the word "impact" has always been meaningful. It would seem manifest that, in enacting the statute, Congress gave consideration to the mechanical problems confronting the railroad industry, as well as to the humanitarian objectives of promoting the safety of railroad employees and travelers.

An examination of the debates in Congress prior to the enactment of the statute is revealing and significant. In the Congressional Record, Volume 24, part 2, 1893, at page 1282, Senator Wolcott of Colorado said:-

> ". . . Everybody desires that some proper coupler should be invented and adopted. Everybody desires that every appliance for the safe transaction of the business should be adopted. What is best nobody even as yet knows.
>
> "There are five thousand different patents. There are some thirty-one appliances (I may state it wrong; it may be thirty-nine or some other figure) which may be used in manufacturing couplers of an interchangeable character. That is to say, of different inventions and appliances there are found to be thirty-one that will mutually interchange with each other, although they are not identically upon the same plan. These thirty-one constitute what

* It is probably technically incorrect to refer to couplers as automatic, at least in the sense of being fully automatic. For instance, coupler knucklers do not open automatically by themselves, nor do they couple by themselves without impact.

> the American Railway Association has denominated a type. It requires a certain height of plat-[1283] form; *it requires a certain automatic action as two cars come together.*" (Emphasis supplied)

It is respectfully submitted that there is a special purpose in using the word "impact", which then, as today, constitutes a distinct and definite recognition of both the practical limitations of a mechanical operating mechanism used to couple heavy railroad cars, and also the requirements of a fair test.*

It is believed significant that after about 80 years of progress and many improvements in design and manufacture, a definite "impact", or thrust of force still is required for a coupler to function, and it is noteworthy that Congress has not changed the use of the term "impact", despite the fact that improvements in electrical proximity devices and other technological developments might make it possible today for cars to couple electronically or by proximity, or otherwise.

We believe it may be said fairly that the couplers in common use will not couple (and the term "couple" includes locking) without sufficient force when they come together. We do not believe that it was ever the intent

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* For the early history of the automatic car coupler, See: Engineering News, Vol. LXVIII, July-December, 1912, page 411 et seq., *The Invention of the Automatic Car Coupler*. And for details of construction and maintenance, See: Association of American Railroads, *United States Safety Appliances, for All Classes of Cars and Locomotives*, (16th Edition, 1950); and *Inspection and Maintenance Manual for Couplers, Coupler Parts and Coupler Operating Mechanism on Freight Equipment Cars*, (1953).

of Congress to require more. Nor has Congress seen fit, since 1893, to change the requirements.

Here, the respondent was injured when he went between the cars in question to attempt to make one of the couplers operate *manually*, but without any direct evidence that the coupler had failed to couple upon impact. If the opinion of the Learned Court of Appeals is allowed to stand and thus to dispense with the necessity of a fair trial by impact by railroad employees, the effective result will be directly contrary to the purpose of Section 2 of the Safety Appliance Act. The purpose of that act was to enable railroad employees to couple or uncouple cars without the necessity of going between them; *Lang v. N.Y.C.R. Co.* 255 U.S. 455, 41 S. Ct. 381, 65 L.Ed. 729 (1921); *Penn v. Chicago N.W. Ry. Co.* 163 F. 2d 995 (7th Cir. 1947), rev'd on other grounds, 335 U.S. 849, 69 S. Ct. 79, 93 L.Ed. 398, reh. den. 335 U.S. 873, 69 S. Ct. 164, 93 L.Ed. 417. Here the only attempt to couple, by a railroad employee, was by manual operation. Surely a coupler cannot violate the statute when it does not do (operate manually) that which it is designed to *avoid* (manual operation).

For this reason, it is believed that the decision of the Court of Appeals in this case is contrary to the expressed intent of Congress and therefore, the allowance of the writ herein is appropriate.

III.

The decision of the Court of Appeals is in conflict with the decisions of this Honorable Court, and its interpretation of Section 2 of the Safety Appliance Act.

In *Johnson v. Southern Pacific Company*, 196 U.S. 1, 25 S. Ct. 158, 49 L.Ed. 362 (1904), speaking of the intent of Congress concerning the Safety Appliance Act and in regard to couplers, this Honorable Court said at pages 19; 376:

> "... Congress was not paltering in a double sense, and its intention is found in the language actually used, interpreted according to its fair and obvious meaning'. United States v. Harris, 177 U.S. 309, 44 L.Ed. 782, 20 Sup. Ct. Rep. 609."

This Honorable Court has recognized, in *O'Donnel v. Elgin, Joliet & Eastern R. R. Co.*, 338 U.S. 384, at 387, 70 S. Ct. 200, at 203, 94 L.Ed. 187, at 190-191 (1949) and *Affolder v. N.Y.C. & St. L.R.*, 339 U. S. 96 at 99-100, 70 S. Ct. 509, at 510-511, 94 L.Ed. 683, at 688 (1950), that under the aforementioned section of the Safety Appliance Act, only three functions are required of couplers: (1) that they couple automatically *by impact*, (2) that they uncouple without requiring men to go between the ends of the cars; and (3) that they stay coupled until caused to open by some purposeful act.

We believe that this Honorable Court recognized the significance of the word "impact". Moreover, this should be particularly true in regard to proof of causation where a failure to couple is based only on the proposition that the coupler did not couple because of independent acts of coal company employees and there was no proof

of an intent to make a coupling. Thus there was no relationship at all to a violation of the statute, i.e., there was no attempt to couple the cars, and no evidence to establish that the couplers should have coupled under the circumstances for which the railroad is being held responsible.

The Court of Appeals here has downgraded the term "impact" to a mere semantic consideration. Inasmuch as the record was barren of any evidence of impact, the Court below equated impact with impingement and then found in the record evidence of impingement, even though the Learned Trial Court had not even found that as a fact, and despite the fact that "impingement" means a "striking".

Significantly, neither the District Court nor the Court of Appeals specified when the so-called "impinging" occurred. That is to say—whether it was when the cars were placed by the coal company or under other circumstances. The Circuit Court of Appeals relied, for its decision, upon testimony that the string of cars was placed on a track which sloped downgrade and concluded that the weight of the cars would bring enough pressure against the couplers to close them tightly. Thus, if the decision of the Court of Appeals was not based upon equating the term "impact" with "impingment", it was based upon the equation of the term "impact" with "pressure".

It is believed noteworthy that Congress used the term "impact" and did not use "pressure".

It is respectfully submitted that the decision of the Learned Court of Appeals is contrary to the decisions of this Honorable Court, which require that a

plaintiff who seeks to recover damages by reason of an alleged violation of Section 2 of the Safety Appliance Act must prove that, on the occasion in question, the cars came together with sufficient impact to afford the couplers in question a fair test. This, it is respectfully believed, is the plain, everyday, ordinary and unambiguous meaning of the term "impact", as used and understood in the railroad industry and throughout the United States, and as referred to by this Honorable Court heretofore. Moreover if the mere failure to couple upon impact is to be evidence of a violation, such attempt to couple by impact should at least be done for the purpose of making a coupling.

III.

The decision of the Court of Appeals is in conflict with the decisions of other circuit courts and of state courts.

In *Southern R. R. v. Stewart*, 119 Fed. 2d, 85 (8th Cir. 1941), reversed on other grounds, 315 U.S. 283, 62 Sup. Ct. 616, 86 L.Ed. 489 (1942), the Court held that there must be sufficient impact at the time of attempting coupling to afford a fair trial of the workability of the coupler and also said that there must be sufficient force, upon the analogous attempt to open the coupler to afford a fair trial of the uncoupling device. In the latter connection, see also *Penn v. Chicago & N.W. Ry. Co.*, 163 Fed. 2d, 995 (7th Cir. 1947) reversed on other grounds, 335 U.S. 849, 69 S. Ct. 79, 93 L.Ed. 398, reh. den., 335 U.S. 873, 69 S. Ct. 164, 93 L.Ed. 417, where recovery was denied because the awkward position of the train-

man prevented exertion of sufficient force to fairly operate the uncoupling device.

Similarly, in *Finley v. Southern Pacific Ry.*, 179 Clif. App. 2d, 424, 3 Calif. Rep. 895 (1960), the Court emphasized the fact that the real question in such cases such as this is whether or not the device in question was given a fair trial, saying, among other things, that the cars be brought together with sufficient impact to effect a coupling. Compare: *Hallada v. Great Northern Rail-Way Co.*, 244 Minn. 81, 69 N.W. 2d 673 (1955) aff'd 245 Minn. 581, 72 N.W. 2d 74, certiorari den., 350 U.S. 874, 76 S. Ct. 119, 100 L.Ed. 773, where the court recognized the importance of impact.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ herein sought should be allowed.

Respectfully submitted,

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APPENDICES

Appendix A.

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF PENNSYLVANIA

Memorandum Order

(Filed February 15, 1960)

After full and complete hearing it is the considered judgment of the Court that the defendant Montour Railroad Company, a corporation, violated the provisions of Section 2 of the Safety Appliance Act and as a proximate result thereof the plaintiff, Louis E. Zimmerman, was injured on November 14, 1958, while engaged in the furtherance of his employment with the defendant.

NOW, THEREFORE, this 15th day of February, 1960, the plaintiff having established his right to recover from the defendant by the fair preponderance of weight of all the credible evidence, judgment of liability is hereby entered in favor of Louis E. Zimmerman, the plaintiff, and against the Montour Railroad Company, a corporation, the defendant.

Counsel for the plaintiff is ordered and directed to submit Findings of Fact and Conclusions of Law for judgment of liability to the Court, with a copy to counsel for the defendant, on or before the 25th day of February, 1960.

It further appears to the Court that negotiations for settlement purposes are desired by counsel for the parties.

NOW, THEREFORE, IT IS FINALLY ORDERED if counsel for the parties do not consummate settlement negotiations on or before March 31, 1960, Findings of Fact and Conclusions of Law as to damages are to be filed with the Court contemporaneously by counsel for the parties on the 4th day of April, 1960.

In the Findings of Fact and Conclusions of Law as to damages, there shall be set forth suggested amounts as established by the evidence as to the following matters:

a. Special damages from date of accident to April 4, 1960.

b. Wages lost from date of accident to April 4, 1960.

c. Amount for impairment of earning power reduced to present worth with reference to formula used in reducing total impairment of earning power to present worth.

d. Amount for pain, suffering and inconvenience, past, present and future.

e. Order for final judgment as to damages in the total amount of the above items.

/s/ WALLACE S. GOURLEY, CDJ
Chief Judge

Appendix B.

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF PENNSYLVANIA

Findings of Fact and Conclusions of Law

Findings of Fact

(Filed March 28, 1960)

1. On November 14, 1958, plaintiff, Louis E. Zimmerman, was working in the employ of the defendant at Champion Yard, Champion Cleaning Plant, Allegheny County, Pennsylvania.

2. At said time and place defendant was engaged in activities in interstate commerce and plaintiff's employment was in furtherance of the said activities.

3. Plaintiff was instructed to perform certain duties necessary to the moving of a train of empty coal cars from the "hill" track.

4. That on inspection plaintiff found the fifth and sixth cars together, the knuckles properly positioned and closed, but the knuckle lock pin not in position, and therefore, the cars were not coupled.

5. Plaintiff attempted several times to properly seat the knuckle lock pin by operating the cutting lever and moving the pin by hand, which attempts proved unsuccessful.

6. It then became necessary for the plaintiff to separate the train in order to allow him to perform whatever service was necessary to effect a proper coupling.

7. While attempting to effect a proper coupling it became necessary for plaintiff to position himself between the fifth and sixth cars of the train.

8. While positioned between the two cars of the train and while attempting to manipulate the coupling device so as to effect a proper coupling, the east car of the cut drifted against plaintiff's arm and held it fast.

9. The engine crew then made a reverse movement which further injured plaintiff's arm to such an extent that it had to be surgically amputated.

Conclusions of Law

1. The defendant violated the provisions of § 2 of the Safety Appliance Acts of Congress and as a result thereof, the plaintiff, Louis E. Zimmerman, was injured on November 14, 1958, while engaged in the furtherance of his employment with the defendant. 45 USCA 2.

An appropriate order is entered.

ORDER

AND NOW, this 28th day of March, 1960, it is ordered and decreed that judgment as to liability will be and is hereby entered in favor of Louis E. Zimmerman, plaintiff, and against Montour Railroad Company, defendant.

s/ WALLACE S. GOURLEY, CDJ
Chief Judge

Appendix C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,595

LOUIS E. ZIMMERMAN
v.
MONTOUR RAILROAD COMPANY, INC.
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued October 6, 1961
Before GOODRICH, STALEY and SMITH, *Circuit Judges.*

Opinion of the Court

(Filed November 9, 1961)

By STALEY, *Circuit Judge.*

In an action tried to the court, defendant railroad company was found liable to one of its employees whose right hand was severed while he was attempting to manually couple two railroad cars which were the fifth and sixth cars in a string of fifteen. Liability was based on Section 2 of the Safety Appliance Act, 45 U.S.C.A. § 2, which makes it unlawful for a railroad engaged in interstate commerce to use cars not equipped with couplers that couple automatically upon impact.

On appeal, defendant contends that there is no evidence in the record to support a finding that the fifth and

sixth cars were brought together with impact, and further, that the district court failed to make such a finding. Plaintiff answers that although the word impact was not used expressly by the district court, such a finding is implicit in those made and must be affirmed by us since it is not clearly erroneous.[1]

We think that the fourth finding of fact made by the district court is a sufficient finding of impact to support the judgment. It reads as follows:

> "4. That on inspection plaintiff found the fifth and sixth cars together, the knuckles properly positioned and closed, but the knuckle lock pin not in position, and therefore, the cars were not coupled."

A district court's finding of fact should be construed liberally and found to be in consonance with the judgment, so long as that judgment is supported by evidence in the record. Travelers Insurance Co. v. Dunn, 288 F.2d 629 (C.A.5, 1956). "Whenever, from facts found, other facts may be inferred which will support the judgment, such inferences will be demed to have been drawn * * *." Triangle Conduit & Cable Co. v. Federal Trade Commission, 168 F.2d 175, 179 (C.A. 7.) affirmed sub nom. Clayton Mark & Co. v. Federal Trade Commission, 336 U.S. 956 (1949).

The findings required by the statute need not be in haec verba. The ultimate test as to their adequacy is whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision. Schilling v. Swnitzer-Cummins Co., 142 F.2d 82 (C.A.D.C. 1944). It

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1. Rule 52(a) of the Federal Rules of Civil Procedure.

has been said that the district court's findings serve as an aid to an appellate court in performing its review function by providing a clear understanding of the basis for decision below. Goodacre v. Panagopoulos, 110 F.2d 716 (C.A.D.C. 1940).

The record unquestionably established that the only purpose of impact is to bring together the knuckles of the coupler on opposing cars, and that when the knuckles are in a closed position, the pin drops by gravity and prevents the knuckles from pulling apart. As used in connection with mechanical activities, the word impact is defined as the impinging of one body against another. Webster's New International Dictionary (2nd ed., 1952), p. 1246. No shock or blow is required, as defendant would have us hold. There was unchallenged testimony in the record that the couplers of the fifth and sixth cars were closed and properly positioned at the time plaintiff went between them in an attempt to manually insert the pin. Here, of course, the closing of the couplers to the extent that the holes were aligned could only have been as a result of one body impinging against another. Clearly, then, in finding that the knuckles were properly positioned, the district court found that everything necessary to effectuate coupling by "impact" had occurred.

Throughout this litigation, the defense was based on lack of "impact." In an oral deposition taken before trial and during cross examination, defendant's counsel repeatedly questioned plaintiff as to whether some factor might have prevented the cars from coming together with sufficient force to give the couplers a "fair trial," e.g., whether the brakes of the cars were on at the time coupling by "impact" was attempted. The record shows that the defendant itself construed the findings to en-

compass one of "impact," for it twice filed motions to amend the findings, contending that "there was no competent evidence of probative value that there had been sufficient impact to cause either or both of the couplers in question to couple automatically." Consistent with the construction, defendant did not seek to amend the judgment because of a failure to make such a finding, but rather, asked again that the judgment be amended because of the lack of sufficient evidence to support that finding. For all of these reasons, we feel that the finding is adequate to support the judgment.

We have examined the cases cited by the parties in support of their contentions as to the adequacy of the evidence. They are of little value. Where we are called on to review a finding of fact, each case must stand or fall on its own record, and our review of this record convinces us that the district court's finding was not clearly erroneous. There was testimony in the record that the knuckles of the fifth and sixth cars had come together and were properly positioned to receive the pin, but that it failed to drop. Plaintiff testified that he went between the cars in order to drop the pin. There is nothing in the record to show that impact is to do anything but align the knuckles, as was done here, in order to receive the pin. Defendant's own witness made that point clear, for on direct examination he testified as follows:

"Q. If the impact is not hard enough to close the coupler completely, it would hold the pin up?

"A. It would hold the pin up.

"Q. And in order to couple on impact, there has to be enough impact to close the coupler completely, is that right?

"A. Yes, sir.

"Q. And otherwise, if the coupler is not closed completely, that will hold the pin up, is that right?

"A. Yes, sir."

There is no evidence in the record that cars do not couple when the knuckles are properly aligned and properly functioning.[2] In addition, there was testimony that the string of cars involved here was placed on a track that sloped downgrade, and that the weight of the cars would bring enough pressure against the couplers of the fifth and sixth cars to close them tightly, thereby aligning the holes in the couplers to receive the pin.

Defendant makes weight of the fact that immediately after the accident, the cars involved were properly coupled, and that inspection on the day following showed that the couplers were in proper working order. It forgets, however, that the duty imposed by Section 2 of the Safety Appliance Act is an absolute one, requiring performance on the occasion in question. Affolder v. New York, Chicago & St. Louis R.R., 339 U.S. 96 (1950).

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

2 In references to testimony in the record forwarded to this court by defendant subsequent to argument, it is suggested that impact may, on occasion, be necessary in order to free and activate the pin by producing "jiggling" or "shaking." An examination of the testimony referred to, however, makes it clear that if the coupler is functioning properly, the pin drops when the knuckles are closed.

Appendix D.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,595

LOUIS E. ZIMMERMAN
v.
MONTOUR RAILROAD COMPANY, INC.,
Appellant

On appeal from the United States District Court
For the Western District of Pennsylvania

Present: GOODRICH, STALEY and SMITH, Circuit Judges

Judgment

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:
IDA O. CRESKOFF
Clerk

November 9, 1961

Appendix E.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,595

LOUIS E. ZIMMERMAN
v.
MONTOUR RAILROAD COMPANY, INC.,
Appellant

Sur Petition for Rehearing

Present: GOODRICH, STALEY and SMITH, Circuit Judges

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

Received and filed December 4, 1961.

IDA O. CRESKOFF
Clerk

By the Court
STALEY
Circuit Judge

Dated:
December 4, 1961